bringing it to PW1, and subsequently obtaining a lunch from PW3.

Fourthly, the district judge failed to articulate his line of thinking to counsel for the two accused. He called for the defence without giving any reason. In this situation, how could counsel and their clients have known that the defence was called on a joint charge of 'doing an act' and not 'showing favour'? Of course they did not know. Nor did the prosecutor. The notes of evidence show that counsel did not put to the applicant and Ranjit Singh questions on the specific acts they did by way of assistance to PW3, nor did the prosecutor cross-examine them on these acts with respect to the charge as clarified by the district judge. The cross-examination was substantially in relation to the second charge. In my view, the applicant did not have a fair trial on the charge on which he was convicted.

Fifthly, if the district judge had adopted the normal course of amending the charge pursuant to his powers under s 180(h) of the CPC, defence counsel might well have objected to the legality of the trial continuing on the amended charge on the ground that the public prosecutor had not given his consent thereto under s 31 of the Prevention of Corruption Act (Cap 241, 1985 Ed). This might have been a fatal objection.

For the above reasons, I hold that the applicant has shown more than an arguable case that his conviction was wrong in law. Counsel for the applicant has advanced other arguments that the conviction was wrong, including the contention that on the evidence the element of common intention was not proved. I do not propose to deal with these arguments, as on the basis of what I have said above, the application to file the petition of appeal out of time will be allowed. His bail is extended on the same terms until the hearing of the appeal against conviction.

Application allowed.

Solicitors: *M Dass & Co.*

Reported by *S Surenthiraraj*

MALAYSIAN REPORTS

Re Vazeer Alam Mydin Meera

HIGH COURT (KUALA LUMPUR) — PETITION FOR ADMISSION NO 18-474-90
EUSOFF CHIN J
13 MAY 1991

Legal Profession — Variation of order — Chambering pupil allowed to appear in open court in sessions courts on behalf of his master in civil cases where value of subject matter does not exceed $25,000 — Legal Profession Act 1976, ss 36(2) & (5)

Words and Phrases — 'Vary' — Legal Profession Act 1976, s 36(5)

Order 54 r 12 of the Subordinate Courts Rules 1980 was amended and Practice Direction No 4/1990 dated 29 November 1990 was issued directing magistrates, until further notice, to concentrate on the disposal of criminal cases. The result was that, except for small claims cases, effective from 1 January 1991, all civil suits in the lower courts were filed in the sessions courts. An application was then filed under s 36(5) of the Legal Profession Act 1976 ('the Act') by the master of a pupil to vary the order made under s 36(2) of the Act so as to enable the pupil to appear in open court in the sessions courts to conduct civil cases on behalf of his master.

Held, allowing the application:

(1) Section 36(2) of the Act should be read subject to s 36(5) of the Act. This means that the order made by the judge under s 36(2) of the Act can be subject to variation, or rescission. There must, of course, be an application made by the master (or Bar Council or State Bar Committee) under s 36(5) of the Act, which application must only be made after the master has obtained an order under s 36(2) of the Act.

(2) The word 'vary' in s 36(5) of the Act should be given its ordinary meaning, which is to 'change, alter, modify, add to or subtract from'.

(3) Section 36(5) of the Act gives a wide discretion to the High Court to vary an order already made under s 36(2) of the Act. The only thing that the court has to consider in making or refusing to make an order under s 36(5) is whether in all the circumstances, the order is or is not, 'in the best interest of the profession'.

(4) Unless the application is allowed, chambering pupils will not be afforded the opportunity of appearing and conducting civil cases in open court in the subordinate courts which experience is very necessary in preparing them to become full-fledged advocates and solicitors of the High Court. It is, therefore, in the best interest of the legal profession that chambering pupils be given the experience of gaining practical knowledge in the conduct of civil suits while in training before being called to the Bar.

(5) Now civil suits where the value of the subject matter does not exceed $25,000 which can be filed and heard in the magistrates' courts are filed and heard in the sessions courts. Henceforth, in allowing the application, an order was made that after the period of three months' pupillage, the pupil may appear in open court in sessions courts to conduct on behalf of his master, civil cases whose value or subject matter does not exceed $25,000.

[Bahasa Malaysia summary

Aturan 54 k 12 Kaedah-Kaedah Mahkamah Rendah 1980 telah dipinda dan Arahan Amalan No 4/1990 bertarikh 29

November 1990 telah dikeluarkan mengarah majistret, sehingga notis lanjut, supaya menumpu perhatian kepada penyelesaian kes-kes jenayah. Akibatnya ialah, bahawa, melainkan untuk kes-kes tuntutan kecil, mulai 1 Januari 1991, kesemua kes sivil dalam mahkamah rendah difail dalam mahkamah sesyen. Satu permohonan telah difail di bawah s 36(5) Akta Profesyen Undang-Undang 1976 ('Akta itu') oleh guru seorang pelatih untuk mengubah perintah yang dibuat di bawah s 36(2) Akta itu supaya membolehkan pelatih menghadiri mahkamah terbuka dalam mahkamah sesyen untuk mengendalikan kes-kes sivil bagi pihak gurunya.

Diputuskan, membenarkan permohonan itu:

(1) Seksyen 36(2) Akta itu patutlah dibaca tertakluk kepada s 36(5) Akta itu. Ini bermakna bahawa perintah yang dibuat oleh hakim di bawah s 36(2) Akta itu bolehlah tertakluk kepada pengubahan atau pembatalan. Sudah tentu, mestilah terdapatnya satu permohonan dibuat oleh guru (atau Majlis Peguam atau Jawatankuasa Peguam Negeri) di bawah s 36(5) Akta itu, di mana permohonan mestilah dibuat hanya selepas guru telah memperolehi satu perintah di bawah s 36(2) Akta itu.

(2) Perkataan 'ubah' dalam s 36(5) Akta itu mestilah diberi makna biasanya, iaitu untuk 'tukar, betulkan, tambah kepada atau tolak daripada'.

(3) Seksyen 36(5) Akta itu memberi budibicara luas kepada Mahkamah Tinggi untuk mengubah satu perintah yang telah dibuat di bawah s 36(2) Akta itu. Perkara yang hanya ditimbang oleh mahkamah dalam membuat atau enggan membuat satu perintah di bawah s 36(5) ialah sama ada dalam semua keadaan, perintah itu adakah atau tidak 'dalam kebaikan profesyen'.

(4) Melainkan permohonan dibenarkan, pelatih tidak akan berpeluang menghadiri dan mengendalikan kes-kes sivil dalam mahkamah terbuka di mahkamah rendah di mana pengalaman adalah sangat diperlukan dalam menyediakan mereka menjadi peguambela dan peguamcara Mahkamah Tinggi yang berkelayakan sepenuhnya. Jadi, adalah dalam kebaikan profesyen undang-undang bahawa pelatih mestilah diberi pengalaman mendapat pengetahuan praktikal dalam mengendali kes-kes sivil semasa dalam latihan sebelum diterima masuk ke Badan Peguam.

(5) Sekarang kes-kes sivil di mana nilai perkaranya tidak melebihi $25,000 yang boleh difail dan didengar dalam mahkamah majistret telah difail dan didengar di mahkamah sesyen. Justeru itu, dalam membenarkan permohonan, satu perintah telah dibuat bahawa selepas tempoh tiga bulan latihan, pelatih bolehlah hadir dalam mahkamah terbuka dalam mahkamah sesyen untuk mengendali bagi pihak gurunya kes-kes sivil di mana nilai atau perkara tidak melebihi $25,000.]

Case referred to

1 *Re Bar Council of Malaysia* [1989] 3 MLJ 379 (refd)

Legislation referred to

Legal Profession Act 1976 s 36(2), (5)
Subordinate Courts Rules 1980 O 54 r 12

Shafee Abdullah for the applicant.
Haji Sulaiman bin Abdullah for the Bar Council.
Shamsul Bahrain for the Selangor and Federal Territory Bar Committee.

Cur Adv Vult

Eusoff Chin J: This is an application under s 36(5) of the Legal Profession Act 1976 ('the Act') for a variation of the order made by this court under s 36(2) of the Act.

In *Re Bar Council of Malaysia*,[1] I held that the effect of s 36(2)(b) of the Act was that, at the expiration of three months, a pupil may appear to conduct any cause or matter: (i) in the chambers of the High Court; (ii) in chambers in the sessions courts or the magistrates' courts; and (iii) in open court before any magistrate.

Subsequent to this decision, O 54 r 12 of the Subordinate Courts Rules 1980 was amended and Practice Direction No 4/1990 dated 29 November 1990 was issued directing magistrates, until further notice, to concentrate on the disposal of criminal cases which were mounting in arrears. The result was that, except for small claims cases, effective from 1 January 1991, all civil suits in the lower courts were filed in the sessions courts.

This application was filed by the master of the pupil to vary the order made under s 36(2) of the Act so as to enable the pupil to appear in open court in the sessions courts, to conduct civil cases on behalf of his master. The Bar Council objected to this application on the ground that a chambering pupil cannot under s 36(2) of the Act appear in open court in the sessions courts and that any variation of the order applied for must be limited to the matters stated in s 36(2) of the Act.

For ease of reference, I quote here s 36(5) of the Act which states:

> The Master of the pupil, the Bar Council or the State Bar Committee may apply at any time during the pupillage of any pupil to any Judge in Chambers for a variation or rescission of the order referred to in subsection (2) and the Judge shall make such order on such application as in all the circumstances seems to be in the best interest of the profession.

I had in *Re Bar Council of Malaysia*[1] stated that s 36(2) of the Act should be read subject to s 36(5) of the Act. By this I meant that the order made by the judge under s 36(2) of the Act can be subject to variation or rescission. There must, of course, be an application made by the master (or the Bar Council or the State Bar Committee) under s 36(5) of the Act, which application must only be made after the master has obtained an order under s 36(2) of the Act.

The word 'vary' in s 36(5) of the Act is not defined by the Act. It is the subject of some arguments before me. Tuan Hj Sulaiman for the Bar Council referred to the word 'vary' found at p 276 of 5 *Words & Phrases Legally Defined* (2nd Ed) where it states:

> VARY
>
> Australia — [Section 49 of the Commonwealth Conciliation and Arbitration Act 1904-1950, provides that the court may set aside an award or any of the terms of an award, or 'vary' any of the terms of an award.] 'The word 'vary' is one which no doubt in different contexts may have different meanings. In s 49 there is a distinction drawn between setting aside an award or any of the terms of an award and varying any of the terms of an award. But the

distinction made, at all events in words, between setting aside and variation, can carry no restriction upon the meaning of 'variation' beyond showing that it refers to a change in some part of the award. Probably it is enough to say that to vary the terms of the award is to change them in part whether by addition, by excision, by modification or by substitution or by qualification or otherwise.' *R* v *Tonkin, ex p Federated Ship Painters' Union* [1954] ALR 777, per cur, at p 779.

In the context used in s 36(5), I think the word 'vary' should be given its ordinary meaning, which is to 'change, alter, modify, add to or subtract from.'

Section 36(5) of the Act gives a wide discretion to the High Court to vary an order already made under s 36(2) of the Act. The only thing that the court has to consider in making or refusing to make, an order under s 36(5) is whether in all the circumstances, the order is or is not 'in the best interest of the profession'.

The period of pupillage is to enable a pupil to receive instructions from, and training by his master, and that includes exposing him to the experience of appearing and conducting cases on behalf of his master in open court in the magistrates' courts after a period of three months' pupillage.

At the moment, effective from 1 January 1991 for reasons already stated, the magistrates' courts hear only criminal cases and civil cases in small claims courts. A pupil is allowed after three months' pupillage to appear and conduct criminal cases on behalf of his master in open court in the magistrates' courts. The procedures to be followed in any criminal proceeding or trial in the courts are not the same as those applicable in a civil proceeding. Can it then be said that at the end of his pupillage, a pupil has received all the necessary training to enable him to be a fit and proper person to be called to the bar and admitted as a full-fledged advocate and solicitor of the High Court unless it can be shown that he has also had the experience of conducting civil cases in open court while he was still a pupil? Is it in the best interest of the legal profession to admit a person who has had no experience while a pupil in conducting civil cases in any open court hearing?

Unless the application is allowed, chambering pupils will not be afforded the opportunity of appearing and conducting civil cases in open court in the subordinate courts which experience is very necessary in preparing them to become full-fledged advocates and solicitors of the High Court. It is, therefore, in the best interest of the legal profession that chambering pupils be given the experience of gaining practical knowledge in the conduct of civil suits while in training before being called to the Bar.

But for the prevailing circumstances, chambering pupils would have been able to appear and conduct hearings of civil suits in open court in the magistrates' courts. Now civil suits where the value of the subject matter does not exceed $25,000 which can be filed and heard in the magistrates' courts are filed and heard in the sessions courts. I think it is fair and reasonable that in allowing the application I also make the order that after the period of three months' pupillage, the pupil Encik Vazeer Alam Mydin Meera may appear in open court in the sessions courts to conduct on behalf of his master, civil cases whose value or subject matter does not exceed $25,000.

Application allowed.

Solicitors: *Shafee & Co; Zain & Co; Skrine & Co.*

Reported by *Neoh Lay Choo*

MUI Bank Bhd lwn Raju

MAHKAMAH TINGGI (KUALA LUMPUR) — PERKARA BANKRAP NO D2-29-13116-89
SITI NORMA YAAKOB H
27 OKTOBER 1990

Kebankrapan — Notis kebankrapan — Bantahan bahawa perintah untuk melanjutkan masa diberi selepas notis kebankrapan sudah luput — Sama ada notis kebankrapan boleh diketepikan — Akta Kebankrapan 1967, s 93(4) — Kaedah-Kaedah Kebankrapan 1969, k 96

Pemiutang telah mengeluarkan notis kebankrapan pada 24 November 1989 dan hendaklah menyerahnya kepada penghutang dalam tempoh tiga bulan dari tarikh notis berkenaan dikeluarkan, iaitu 24 Februari 1990, menurut k 96, Kaedah-Kaedah Kebankrapan 1969. Pemiutang gagal menyerah notis kepada penghutang dalam tempoh tiga bulan yang dihadkan itu dan satu permohonan dibuat untuk melanjutkan masa bagi membolehkannya menyerah notis itu kepada penghutang. Perintah melanjutkan tempoh notis selama sembilan bulan telahpun diperolehi pada 1 Mac 1990.

Penghutang telah mempertikaikan perintah melanjutkan masa oleh kerana pada 1 Mac 1990, notis kebankrapan telah luput. Oleh itu, permohonan dibuat olehnya untuk mengetepikan notis kebankrapan itu. Penghutang juga memohon kebenaran untuknya memfailkan afidavit membantah notis kebankrapan.

Diputuskan, menolak permohonan penghutang:

(1) Walaupun permohonan melanjutkan masa dibuat selepas notis kebankrapan telah luput, faktor ini tidak menjejas bidang kuasa mahkamah untuk membenarkan permohonan tersebut kerana s 93(4) Akta Kebankrapan 1967 telah memperuntukkan bahawa di mana dalam Akta tersebut atau pun dalam kaedah-kaedahnya masa untuk melakukan sesuatu dihadkan, mahkamah mempunyai budibicara, sebelum atau selepas luputnya masa berkenaan, untuk melanjutkan masa.

(2) Kaedah 96 hanya menentukan masa notis kebankrapan hendak diserahkan kepada penghutang iaitu dalam tempoh tiga bulan dari tarikh notis berkenaan tetapi tidak pula menetapkan tempoh notis berkenaan boleh dilanjutkan.

(3) Mahkamah mendapati bahawa kebenaran bagi penghutang untuk memfailkan afidavit membantah notis kebankrapan tidak perlu oleh kerana tiada terdapat bukti bahawa per-